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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN LEONARD DAVENPORT,

Defendant and Appellant.

A155476

(Sonoma County
Super. Ct. No. SCR-717428)

Defendant John Leonard Davenport appeals a judgment entered upon his plea of no contest to a single charge of possessing ammunition with a felony conviction (Pen. Code,¹ § 30305, subd. (a)) imposing a sentence of three years' probation in accord with his plea agreement. His attorney has submitted a brief in accord with *People v. Wende* (1979) 25 Cal.3d 436 and has advised defendant of his right to submit a supplemental brief, which he has not done. This court's review of the record has disclosed no issues warranting further briefing.

On the evening of February 4, 2018, the Santa Rosa Police Department received two separate reports of gunshots involving defendant. His neighbor reported having heard shots at defendant's house, and his former girlfriend reported that he had fired shots near her apartment. At the former girlfriend's residence, officers found two bullet holes in her windshield, two empty casings and three live rounds of .45 ammunition on the ground nearby, and a bullet fragment inside the car. When detectives later executed a search warrant at defendant's home, they found various types of ammunition.

¹ All unspecified statutory citations are to the Penal Code.

The district attorney filed a felony complaint charging defendant with three counts: (1) being a felon in possession of ammunition and reloaded ammunition in violation of chapters 2 and 3 of division 9 (§ 30305, subd. (a)(1)), (2) discharging a firearm in a grossly negligent way (§ 246.3, subd. (a)), and (3) vandalism causing over \$400 in damage (§ 594, subd. (a)). The complaint also alleged six enhancements.

When defendant appeared for a preliminary hearing his attorney informed the court that he had agreed to waive a preliminary hearing on count one (a felon in possession of ammunition) in exchange for the People dropping the remaining charges. After confirming that the waiver was voluntary and knowing, the court accepted it. The district attorney subsequently filed an information charging defendant with a single count of possession of ammunition by a felon (§ 30305, subd. (a)(1)) and repeating the enhancement allegations of the complaint.

Defendant executed a four-page “Felony Advisement of Rights, Waiver, and Plea” form, and appeared with counsel on August 8 to change his plea to no contest in exchange for dismissal of the special allegations and imposition of three years’ supervised probation, with credit for time served. He initialed passages on the form that, among other things, advised him of his constitutional rights, stated that he freely and voluntarily waived those rights and his right to trial, and confirmed that he had had time to discuss with his attorney his rights and defenses, and the consequences of the plea. He and his attorney each signed the form. At the August 8 hearing, the court confirmed the substance of the plea bargain, confirmed that defendant had personally initialed and understood the advisement form, accepted counsel’s stipulation to a factual basis for the plea, and found a knowing, voluntary, and intelligent waiver of defendant’s rights. The court then accepted the plea of no contest and found defendant guilty. The court subsequently sentenced defendant, in accord with the agreement, to three years’ supervised probation, with 265 days’ credit for time served.

On September 25, 2018, defendant filed a notice of appeal and request for certificate of probable cause. He asserted in the request that he had received ineffective assistance of counsel, complaining that counsel had failed to investigate the case, file

motions, interview witnesses, or move to suppress evidence found pursuant to the search warrant. He also complained of actions by the court and the district attorney preceding the plea, including the failure to hold a hearing on bail between May 1 and June 21 and issuing criminal protective orders as to the neighbor and former girlfriend. The court denied the request for a certificate of probable cause, and defendant did not petition this court for a writ of mandate to compel the trial court to issue one. (See *People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188 [“a trial court’s refusal to issue a certificate of probable cause is reviewable by writ of mandate”].)

Under section 1237.5, with exceptions not applicable here, a defendant cannot appeal from a judgment of conviction based on a plea of no contest without obtaining from the trial court a certificate of probable cause based on a showing of reasonable constitutional, jurisdictional, or other grounds for appeal going to the legality of the proceedings. (*People v. Johnson* (2009) 47 Cal.4th 668, 676–677.) This rule applies to claims of ineffective assistance of counsel. (See, e.g., *People v. Richardson* (2007) 156 Cal.App.4th 574, 595–596.) Accordingly, on this appeal we may consider only any issues that fall outside the scope of the certificate requirement. (*In re Brown* (1973) 9 Cal.3d 679, 683, superseded on other ground as noted in *People v. Mendez* (1999) 19 Cal.4th 1084, 1103–1104.) The issues here are limited to those that “arose after entry of the plea and do not affect the plea’s validity.” (Cal. Rules of Court, rule 8.304(b)(4)(B).) In an application for an extension of time to file a supplemental brief after appointed counsel had filed her brief (which supplemental brief defendant never filed), defendant asserted that the police department had refused to release complete copies of the police reports in the case and that he has “statements under oath” that counsel could have obtained and that could have “cleared” him. These assertions concern matters that would affect the validity of his plea, and thus cannot be raised on appeal without a certificate.

Defendant’s appointed counsel has filed a brief and a declaration indicating her determination that there are no viable issues to raise on appeal, and this court’s review of the record has not disclosed any such issues involving matters that arose after entry of the plea and that do not affect the validity of the plea.

Disposition

The appeal is dismissed for failure to secure a certificate of probable cause.

POLLAK, P. J.

WE CONCUR:

STREETER, J.

TUCHER, J.